# Petition

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81-1628

CASE NO. _____
SUPREME COURT OF THE UNITED STATES

OCTOBER 1981 TERM

SHEILA REILLY,

PETITIONER

vs.

JOSEPH CALIFANO,

SECRETARY OF THE DEPARTMENT
OF HEALTH, EDUCATION & WELFARE,

RESPONDENT

ON WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

# PETITION

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## QUESTION PRESENTED FOR REVIEW

WHETHER THE EMPLOYER'S BURDEN OF ARTICULATING A LEGITIMATE, NON-DISCRIMINATORY REASON FOR REJECTING PLAINTIFF FOR A VACANCY AND CONTINUING TO SEEK OTHER APPLICANTS, INCLUDING THOSE OBJECTIVELY LESS QUALIFIED THAN PLAINTIFF, IS MET BY ONE MANAGER'S EXPRESSION OF A SELF-SERVING SUBJECTIVE AND STEREOTYPICAL IMPRESSION OF PLAINTIFF'S "PERSONALITY TRAITS", i.e. "SHY, RETIRING AND RATHER INTROVERTED", WITHOUT ANY EVIDENCE TO SUPPORT SAID ASSERTION.

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1. U.S. Court of Appeals for the Seventh Circuit Order dated November 30, 1981.

2. U.S. District Court for the Northern District of Illinois Memorandum Opinion dated January 27, 1981.


*/ Because the Appendix material is voluminous and would cause this petition to exceed its page limit, the Appendix is separately presented.

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## JURISDICTION

The U.S. Court of Appeals for the Seventh Circuit rendered its order affirming the District Court decision on November 30, 1981 and this petition for writ of certiorari is submitted pursuant to 28 U.S.C. 1254(1) and 28 U.S.C. 2101(c).

## QUESTION PRESENTED FOR REVIEW

WHETHER THE EMPLOYER'S BURDEN OF ARTICULATING A LEGITIMATE, NON-DISCRIMINATORY REASON FOR REJECTING PLAINTIFF FOR A VACANCY AND CONTINUING TO SEEK OTHER APPLICANTS, INCLUDING THOSE OBJECTIVELY LESS QUALIFIED THAN PLAINTIFF, IS MET BY ONE MANAGER'S EXPRESSION OF PLAINTIFF'S "PERSONALITY TRAITS", I.E., "SHY, RETIRING AND RATHER INTROVERTED," WITHOUT ANY EVIDENCE TO SUPPORT SAID ASSERTION.

## STATEMENT OF THE CASE

This case was originally heard in the District Court for the Northern District of Illinois under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. §2000 e-16(c). Plaintiff alleged that Richard Friedman's rejection of her and another female applicant for the position of Chief, Labor Management Relations, when their names were submitted to him on a promotion certificate of highly qualified candidates, constitutes sex discrimination. She also alleged cover-up and retaliation when, after Plaintiff initiated EEO proceedings, another female, objectively ranked lower than Plaintiff, was selected for the position and Plaintiff's funding for job-related law school courses was terminated. The facts set forth below are primarily taken from relevant portions of the parties' Stipulation of Uncontested Facts.

In 1976, Plaintiff was a Labor-Management Relations Specialist at HEW, Region V. She reported to LeRoy Bradwish, Chief, Labor-Management Relations, and often served as Chief in his absence. Richard Friedman was the HEW Regional Director. Thomas Dodson was the Personnel Officer and Plaintiff's second level supervisor. When Bradwish announced he was taking a position with another agency, Friedman detailed Plaintiff to be Acting Chief. A vacancy announcement for the position, GS-13, was posted in HEW offices nationwide which invited any qualified Federal employee to apply. Also, names of candidates from outside HEW were requested from the Civil Service Commission's Federal Automated Career System (FACS) list. Five of the twenty-three applicants met the minimum requirements for ranking by the promotion panel. Friedman selected Bradwish; Richard Hacker, Director, Labor Relations HEW Headquarters; and Robert Ford Staff Assistant, Intergovernmental Relations

HEW, to be the panel members. "In light of Mr. Friedman's concern about the Labor Management Relations Branch Chief position and in light of the need for an individual with experience in dealing with unions, neither Mr. Dodson nor Mr. Friedman assigned weights to the subcategories listed within the 'experience' category on the evaluation factors provided to the promotion panel. No weights to these subcategories were assigned because Mr. Dodson and Mr. Friedman felt that the promotion panel, which had extensive knowledge of the needs of the position to be filled, could interpret each of these elements. It was considered important to leave up to the experienced panel members the manner in which to allocated points among the various subgroups under experience." 1/

1/ Quoted from the parties' Stipulation of Uncontested Facts, which was Plaintiff's Exhibit A at trial.

On the basis of the deliberation of the promotion panel, a promotion certificate dated October 8, 1976 was submitted to Friedman containing the names of two individuals listed as the best qualified candidates: Plaintiff and Sharon Bauer, both women. Both were considered by the panel to be "highly qualified" within Civil Service Commission regulations. The established cut-off point for "highly qualified" was 60 points; Plaintiff received 76 points and Bauer received 65 points from the promotion panel. The promotion panel ranked Cynthia Soltes, who was on the FACS list, on the basis of the statement of qualifications of individuals therein. She was not recommended to Friedman on the Promotion Certificate.

Friedman rejected both Plaintiff and Bauer, neither of whom were interviewed. He did not give any explanation on the Promotion Certificate for the rejections. He testified that

he rejected Plaintiff because "particularly, I made a subjective judgment that Ms. Reilly was a shy, retiring and rather introverted person. I felt that she would be unable to deal effectively with the union in an adversary negotiating situation." 2/ His testimony was vague and general in this regard and he related no specific instances or circumstances under which he observed Plaintiff or what labor relations function or duty she may have then been performing. 3/ His "impression" was therefore unfounded and not based on any objective point of reference or criteria. Friedman's testimony on the reason for not selecting Bauer consisted of the following: "In terms of Ms. Bauer, who I also

2/ Transcript, p.21, 25

3/ Defendant's Counsel's appellate court brief admits "On cross-examination, Friedman testified that he could not recall specific occasions upon which he was able to observe plaintiff's job performance." (page 5)

knew (reasonably) well for the prior year or two, I felt that she was marginally qualified in that I felt that she has a bit more of a stronger, more dominant kind of personality. But yet I would have felt very uncomfortable in selecting her for that position..." 4/ The 1977-78 Affirmative Action Plan stated that "Serious underrepresentation still exists, however, (in the total Region V workforce) particularly of women in grades 12 and above".

Friedman caused the position to be reannounced at a lower grade level, thereby seeking candidates objectively less qualified than Plaintiff. "The rationale offered by Richard Friedman for reannouncing the Labor-Management Relations Branch Chief position at the lower grade, GS 230-12/13, was to attract additional highly qualified candidates." 5/

4/ Transcript, page 26.
5/ Quoted from fact stipulation.

"In the process of selecting individuals to fill positions in Region V, DHEW at grades 13 and above prior to October 21, 1976, Richard Friedman had never directed that a psotion, once advertised in a vacancy annoucement, be reannounced after applicants had been ranked by a promotion panel and certified for selection as 'highly qualified'". 6/

On October 21, 1976, Plaintiff was informed of the decision to reannounce and thereafter initiated EEO proceedings. On November 8, an EEO counselor "met personally with Richard Friedman and George Holland, Deputy Regional Director, and discussed Sheila Reilly's claims of sex discrimination." 7/ Plaintiff asked that her detail as Acting Chief and designation as Chief Negotiator for the Regional Director's Negotiations Team be terminated.

6/ Quoted from fact stipulation.
7/ Quoted from fact stipulation.

Seven applicants for the reannounced position (5 males and 2 females) met the minimum requirements and were ranked by a promotion panel selected by Friedman, which consisted of Hacker; Ellen Dye, Intergovernmental Relations; Robert Moman, Office of Human Development. This time, Friedman assigned numerical weights to the subcategories listed within the "experience" category. The panel established a cut off point of 60 points for "highly qualified" and submitted three names to Friedman as "highly qualified" for the position: Thomas Artman, male (87 points), Plaintiff (73 points), Cynthia Soltes, female, (67 points). All three had applied at the GS-13 level.

Plaintiff was interviewed by Friedman and Holland on November 23 and, at Friedman's request, by Dodson and George Bardahl, Assistant Regional Director for Administration and Management, on November 24. Soltes was also

interviewed. "Friedman did not request Mr. Bardahl or Mr. Dodson to interview Thomas Artman". 8/ When Bardahl and Dodson jointly recommended to Friedman to select Soltes, "Bardahl was under the impression that Mr. Friedman had already made up his mind." 9/ Friedman testified that he selected Soltes because she was "a very strong out-going, somewhat extroverted person" and "I made a subjective judgement that I thought that she would be able to stand up well in the environment of an adversary labor negotiations situation." 10/

8/ Quoted from fact stipulation. In the appellate court decision it is stated that Artman was interviewed (page 3, footnote 4). However, there is no evidence in the record to establish that Artman was interviewed by anyone.

9/ Quoted from fact stipulation.

10/ Transcript page 31. The lower court opinions quote Friedman as testifying that Soltes was "outgoing and aggressive". But the record is devoid of the use of the term "aggressive" by Friedman.

## ARGUMENT

THE EMPLOYER'S BURDEN OF ARTICULATING A LEGITIMATE, NON-DISCRIMINATORY REASON FOR REJECTING PLAINTIFF FOR A VACANCY AND CONTINUING TO SEEK OTHER APPLICANTS, INCLUDING THOSE OBJECTIVELY LESS QUALIFIED THAN PLAINTIFF IS NOT MET BY ONE MANAGER'S EXPRESSION OF A SELF-SERVING SUBJECTIVE AND STEROTYPICAL IMPRESSION OF PLAINTIFF'S "PERSONALITY TRAITS", I.E., "SHY, RETIRING AND RATHER INTROVERTED," WITHOUT ANY EVIDENCE TO SUPPORT SAID ASSERTION.

It is submitted that thw lower courts' decisions to the contrary would serve to encourage pretextural mischief on the part of employers and thus defeat the intent of Congress in enacting civil rights legislation. It would seem that these lower courts' decisions are not consistent with Texas Department of Community Affairs v. Burdine, 101 S. Ct. 1089 (1981) wherein it is stated

that the Defendant's reason for rejection must "frame the factual issue with sufficient clarity so that the Plaintiff will have a full and fair opportunity to demonstrate pretext" (at page 1095). The defendant's explanation must be "clear and reasonably specific" (at page 1096). A subjective impression without any supporting evidence is neither clear nor specific and is by its very nature impossible to directly refute because there is no way to get into the person's mind to refute his allegation that he received the impression he claims to have received. Also, without any supporting evidence offered, there is no way to refute any alleged objective basis for the impression or its alleged relationship to the personality trait proffered. Should any probative evidence have been offered by Friedman of any event in which Plaintiff's alleged "shy, retiring, and rather introverted" nature had worked to her

disadvantage in her chosen profession, rebuttal evidence could have been adduced in accord with the dictates of Burdine. Inasmuch as the record is devoid of any such instances, the capability to rebut the subjective impression is totally defeated.

Plaintiff could have presented witnesses' testimony that she was not shy, retiring, nor introverted, but was outgoing and aggressive, but this would not have impeached Friedman's subjective impression to the contrary.

For the foregoing reasons, it is submitted that the Seventh Circuit's finding 11/ that Friedman's reason for rejection clearly framed the factual issue so that the Plaintiff was able to ascertain the position she must rebut is erroneous and should be reversed.

11/ at page 5.

The Seventh Circuit decision finds,[12/] sua sponte, that Plaintiff's worker evaluation "tends to legitimize and give substance to Friedman's opinion of the plaintiff" by relating that Plaintiff received her lowest marks in "oral communication", "ability to function in interpersonal situations", "counseling", "evaluating subordinates", "motivating subordinates", and "delegation of assignments/authority". It must be noted, however, that these lowest marks were in the category "consistently exceeded job requirements and that the appraisal included supervisory potential as well as current job performance. Therefore, any nexus, if such there be, between the cited ratings and the personality traits proffered, would have to create an inference favorable to the Plaintiff and would be totally unsupportive of the

12/ at page 7.

proffered reason for rejection because the ratings are well above those of the average individual in the profession. Additionally, it is noted that Plaintiff was rated "consistently exceeded job requirements to an exceptional degree" in the following categories: "informing/consulting", "negotiating ability", "resourcefulness", "adaptability/flexibility", "discipline"(of subordinates), "training and development"(of subordinates), "coordination", and "reporting functions". There would seem to be no more of any nexus between "shyness, retiredness and introversion" and the categories listed by the Seventh Circuit that the other categories listed above and not listed by the Seventh Circuit. Indeed, it would seem that "negotiating ability" would be of prime importance in determining one's ability to deal with unions, which was Friedman's primary concern. In fact, Plaintiff had experience negotiating with unions and Friedman and others had complimented her

ability in those negotiations. To wit,

1. "During preparation for negotiations (with AFGE Local 3381) and throughout the negotiation process, Miss Sheila Riley of the Regional Personnel Office has assisted us in a most capable manner....Her willingness to serve on the negotiating team and her wise counsel during the negotiation process help account for what we feel will be a very satisfactory agreement;"13/

2. "The agreement, in our opinion, is well written and reflects favorably on the efforts of the negotiating parties. We wish, moreover, to express our appreciation for the assistance rendered the District during the negotiations by Ms. Sheila Reilly of the Regional Personnel Office. We understand that she contributed greatly to the successful outcome of the negotiations;" 14/

3. "Brad/Sheila - Very nice! - "R" (note by Friedman attached to above comment).

13/ From a letter by Henry Roberts submitted at trial as an exhibit.

14/ From a memo by Gerald F. Meyer submitted at trial as an exhibit.

In sum, Friedman could not offer and the lower courts could not find in the record any evidentiary support whatsoever for Friedman's subjective impression, and this impression was the sole reason for Plaintiff's rejection. Additionally, it is indicative of stereotypical concepts of the abilities of people to perform certain tasks because of their sex, i.e., males being, strong, active, and aggressive and females being passive and retiring. Because of the ease of conjuring up a subjective reason to rebut a discrimination charge, especially a stereotypical one, and the subsequent defeat of the intent of federal civil rights legislation, Plaintiff prays that the court grant this petition for writ of certiorari.

Respectfully submitted,

3-17-82 Sheila A. Reilly

Sheila A. Reilly

# Appendix

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# APPENDIX

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# United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Argued November 17, 1981

November 30, 1981

UNPUBLISHED ORDER
NOT TO BE CITED
PER CIRCUIT RULE 35

Before

Hon. WALTER J. CUMMINGS, Chief Judge

Hon. HARLINGTON WOOD, JR., Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

SHEILA REILLY, Plaintiff-Appellant,

No. 81-1351 vs.

JOSEPH CALIFANO, Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 77 C 20
Joel M. Flaum, Judge.

ORDER

The plaintiff Sheila Reilly, a former employee of the Department of Health, Education, and Welfare,1/ appeals the district court's denial of her claims brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended by the Equal Employment Act of 1972, 42 U.S.C. § 2000e-16(c). She alleged that the defendant2/ denied her a

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1/ Since the filing of plaintiff's complaint, HEW has been redesignated the United States Department of Health and Human Services. See 20 U.S.C. § 3508(a) (1978).

2/ The named defendant is Joseph Califano who was Secretary of HEW at the time the instant case was filed. Richard Schweiker is presently the Secretary of HHS. The other defendants named in plaintiff's original complaint have been dismissed voluntarily from the instant case.

promotion on the basis of her sex. She also alleged that the defendant took unlawful retaliatory action against her in two instances because she initiated an EEO complaint regarding the promotion.

The issues presented in this appeal are: (1) did the trial court err in finding that the defendant had articulated a legitimate, nondiscriminatory reason as to why the plaintiff was not promoted, and that the plaintiff had not proven this reason to be a mere pretext for discrimination, (2) did the trial court err by failing to conclude that the defendant's failure to select the plaintiff for the reannounced position was retaliation for the complaint which the plaintiff filed with the EEOC, and (3) did the trial court err in finding that the defendant's denial of funding for the plaintiff's training courses was not retaliatory in nature but for legitimate, nondiscriminatory reasons. We affirm the decision of the district court for the reasons discussed in this order.

I.

The facts of this case are not in dispute. In August 1976, plaintiff was employed by HEW as a Labor-Management Relations Specialist and had held this position since 1974. She reported directly to LeRoy Bradwish (Bradwish), Chief of the Labor-Management Relations Branch, and often served as Chief in Bradwish's absence. Richard Friedman was the Regional Director of HEW and was responsible for supervising the hiring and promotion of the 15,000 employees within his region. Friedman was also directly responsible for the hiring and promotion of the 30 to 40 employees who worked in his office.

In August of 1976, Bradwish announced that he was resigning as Chief effective September 1, 1976. Plaintiff was assigned to the position of Acting Chief of the Labor-Management Relations Branch for the interim period between Bradwish's resignation and the appointment of his successor. The responsibility for finding a replacement for Bradwish belonged to Friedman.

On September 8, 1976, a vacancy announcement was posted in HEW offices nationwide which invited any qualified federal employee to apply for the position. In addition, the Regional Personnel Office of HEW requested the names of candidates from outside HEW from the United States Civil Service Commission's Federal Automated Career System list (FACS list).3/ A total of

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3/ The FACS list is a register maintained at the United States Civil Service Commission which lists job applicants who have registered for referral to positions within their areas of interest.

twenty-three persons applied for the vacancy. The FACS list was only partially considered because the entire FACS list did not arrive in time to meet the September 24, 1976 closing date for applications. Only five of the applicants met the minimum requirements required for the position.

A promotion panel was then established to evaluate the eligible applicants. Objective criteria were to be used in these evaluations. On October 8, 1976, the promotion panel submitted an advisory promotion certificate to Friedman. The certificate listed only the plaintiff and Sharon Bauer as "best qualified" for the position. No other names were submitted to Friedman.

Friedman rejected both names. He then ordered the position to be reannounced at a lower federal grade level so that more people would be eligible to apply. All applicants from the original announcement were automatically considered as applicants for the reannounced position.

After being informed that she had not been chosen for the position, the plaintiff sought pre-complaint counseling from the EEOC. On their advice, she requested to be returned to her previous job position.

A second promotion panel was convened to rank the applicants. The ranking system used was the same as the one employed by the first promotion panel, except that numerical weights were assigned to the subcategories. This had not been the procedure in the first ranking system. Seven people were considered minimally qualified. Of these seven, three names were submitted to Friedman as being "highly qualified."4/ Within the next five days, all three finalists were personally interviewed by various individuals.

On November 23, 1976, plaintiff filed a formal complaint with the EEOC charging Friedman and several others with sexual discrimination. Friedman received notice of the suit on the same day that the complaint was filed. The next day, November 24, 1976, Friedman announced that Soltes had been selected for the position. He later testified that he felt Soltes was the most qualified for the position because she was an "outgoing and aggressive" individual with experience in dealing with unions.

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4/ The names Thomas Artman, the plaintiff Sheila Reilly, and Cynthia Soltes were submitted. Artman received 87 points, plaintiff 73, and Soltes 67. Their names were submitted to Friedman on November 19, 1976. Plaintiff was interviewed on November 22 and 24 and Soltes on November 24. Both women were interviewed by Friedman. Artman was interviewed by George Holland, Deputy Regional Director of HEW. The exact date of this interview is not known. Holland also interviewed Reilly and Soltes.

On December 6, 1976, the plaintiff was informed that she would not be receiving funding for two law school courses which she felt were necessary for her job. Funding had been approved for other courses in the past.

On January 4, 1977, the plaintiff filed suit in district court. Judge Flaum, after a trial to the bench, found for the defendant on all counts in a memorandum opinion dated January 27, 1981. This appeal followed.

II.

It is axiomatic that the findings of the trial court will not be disturbed unless clearly erroneous. Fed. R. Civ. P. 52(a); Gaballah v. Johnson, 629 F.2d 1191, 1200 (7th Cir. 1980). However, "[a] distinction must be drawn between subsidiary facts to which the 'clearly erroneous' standard applies, and the ultimate fact of discrimination within the meaning of Title VII...." Ungar v. Consolidated Foods Corp., 657 F.2d 909, 915 (7th Cir. 1981). The latter requires "an independent examination of whether defendant's conduct constitutes a violation of Title VII." Id. We also note that when the factual determination is primarily a matter of drawing inferences from undisputed facts or determining their legal implications, appellate review is much broader than where disputed evidence and questions of credibility are involved. Flowers v. Crouch-Walker Corp., 552 F.2d 1277, 1284 (7th Cir. 1977), quoting Mayo v. Pioneer Bank & Trust Co., 297 F.2d 392, 395 (5th Cir. 1969). It is from these standards that we will make our analysis.

III.

The essence of plaintiff's complaint is that defendant discriminated against her on the basis of sex by not selecting her for the position of Labor-Management Relations Branch Chief, in violation of Title VII. This claim puts the dispute squarely in the "disparate treatment" category of Title VII cases. The appropriate legal standard for the order and allocation of proof in a disparate treatment case is that established by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800 (1973).

There is little doubt that the plaintiff has established a prima facie case. The record reveals that the plaintiff, a woman, applied for the position of Branch Chief. A promotion panel found her to be a "highly qualified" applicant. She was rejected for the position. The job opening was then reannounced to seek additional applicants. Her burden of proof at this stage has been met.

Once plaintiff has established a prima facie case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the employee's rejection. McDonnell-Douglas, supra, 411 U.S. at 802. It is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff. To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection. Tex. Dept. of Community Affairs v. Burdine, 101 S.Ct. 1089, 1094 (1981). The explanation provided will thus frame the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext. The defendant's burden is one of articulation, not persuasion. Id., 101 S.Ct. at 1094.

The record supports the trial court's finding that the defendant articulated a legitimate, nondiscriminatory reason for not promoting the plaintiff. Richard Friedman, who was responsible for filling the position, testified that he considered a strong, outgoing personality essential for the negotiating position. Based on his observations of the plaintiff both while she occupied the position of Acting Chief and also in her original position as Assistant to the Chief, he felt that plaintiff was "technically" very competent. However, he also saw her as a shy, retiring, and rather introverted person who would not be able to function effectively in an adversary negotiation situation. Thus despite plaintiff's excellent performance evaluations in her lower position, Friedman did not promote the plaintiff. Friedman also testified that he was under no obligation to accept any of the names submitted to him by the promotion panel.

Friedman's reason for not promoting the plaintiff clearly framed the factual issues so that the plaintiff was able to ascertain the position she must rebut. The defendant has met his burden by explaining what he has done. See Skerkow v. Wisconsin, supra, 630 F.2d at 502. Establishing promotion qualifications, both objective and subjective, is an employer's prerogative. See Crawford v. Western Elect. Co., Inc., 614 F.2d 1300, 1315 (5th Cir. 1980). The trial court was able to assess Friedman's credibility. Its decision that the defendant did articulate a legitimate, nondiscriminatory reason for not promoting plaintiff is not clearly erroneous.

The order of proof then imposes upon the plaintiff the burden of proving that the reasons advanced were a pretext and that a motivating or substantial factor for the defendant's decision was discrimination and but for that discrimination the plaintiff would have been promoted. McDonnell-Douglas Corp. v. Green, supra at 804-805. It is important to remember that

throughout this paradigm the ultimate burden of persuasion remains with the plaintiff, who must convince the court by a preponderance of the evidence that she has been the victim of discrimination. See Texas Dept. of Community Affairs v. Burdine, supra, 101 S.Ct. at 1093; Ungar v. Consolidated Foods Corp., supra, 657 F.2d at 916 n.9 (7th Cir. 1981). Pretext may be proven either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence. Texas Dept. of Community Affairs v. Burdine, 101 S.Ct. at 1095. The trial court found that the defendant's presumptively valid reason for not promoting the plaintiff was not proven to be a pretext for discrimination. Upon review of the evidence, we agree that the defendant's explanation is not a pretext, that it is worthy of credence and is supported by the evidence.

The position of Chief of the Labor-Management Relations in HEW Region V was considered a very important position. A major responsibility of the job was to insure harmonious relations with a union and workers in a region encompassing 15,000 employees. In the vacancy announcement posted nationwide, the duties of the job were described in part as "Responsible for Labor-Management relations program. Develop regional Labor-Management relations policies and program." The job clearly required an ability to function effectively between two adversarial groups.

It was Friedman's opinion that an outgoing personality was an essential requirement for the job. This requisite was illustrated in the vacancy announcements. For example, under the heading of "General Experience," the post was described as requiring "the ability to communicate with others effectively, both orally and in writing." Also, under "Specialized Experience," the job required an ability to "interpret union interests to management and management interests to employees." Friedman's desire to hire an outgoing, winsome individual to fill the position of Chief of Labor-Management Relations was not unreasonable.

Friedman testified that he had many occasions to observe the plaintiff at work, both while she was Acting Chief and while she served as Assistant to the Chief of Labor-Management Relations. Friedman considered her extremely competent in her role as Assistant to the Chief. He felt that her strength was in dealing with technical questions. However, Friedman considered the plaintiff "not quite right" for the job of Chief because she was not outgoing enough for the position.

A worker evaluation of the plaintiff in her position as Assistant to the Chief tends to substantiate Friedman's beliefs. The plaintiff's evaluation reveals her to be an excellent employee. However, her lowest marks (although still above what was required for her position) were in areas of "oral communication," "ability to function in interpersonal situations," "counseling," "evaluating subordinates," "motivating subordinates," and "delegation of assignments/ authority." Her highest grades were in areas of technical competence. This worker evaluation tends to legitimize and give substance to Friedman's opinion of the plaintiff.

After the job was posted for the second time, Friedman was presented with three names described as "highly qualified." All three individuals were interviewed. We note here that Friedman ultimately selected another woman from this list, Ms. Cynthia Soltes.5/ Friedman found Soltes to be a "very strong, outgoing" person, someone who would be able to "stand up well in the environment of an adversary labor negotiations situation." Friedman contacted her previous supervisors who described her as a "strong, unflappable, solid kind of person." These were personal characteristics that Friedman, rightly or wrongly, found missing in the plaintiff.

The Supreme Court in McDonnell-Douglas noted several additional factors that courts reviewing employment decisions can rely on without replacing the employer's judgment with that of the court. For example, a court can look to the employer's treatment of the complainant employee during the course of her employment, and the employer's general policy toward minority employment. McDonnell-Douglas Corp. v. Green, supra, 411 U.S. at 805.

A review of Friedman's background and general policy toward women and minorities reveals no evidence of any tendency to discriminate because of sex. One of his first acts after being appointed Regional Director in 1971 was to develop an affirmative action plan. He testified that he made every effort to select women and other minorities to fill vacant positions. He initiated the Federal Regional College.6/ He

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5/ The plaintiff claims that a woman was chosen by Friedman to cover up his prior sexual discrimination. However, there is no evidence to suggest that such was the case. As will be discussed, Friedman found the woman selected to be highly qualified for the position.

6/ Friedman described the Federal Regional College as an opportunity for people to obtain "on-site academic training leading to an academic degree." Eighty percent of the participants were women.

testified that he was one of the first males to join Men for ERA and was the first regional director within HEW to appoint a full-time women's program coordinator. In 1975 he won an HEW award of merit for service to the federal women's program. The record also reveals communications between plaintiff and Friedman which show that his treatment of plaintiff was fair and supportive.

In summary, the plaintiff has not proven that she was discriminated against because of her sex or that the employer's reasons for not promoting her are unworthy of credence. An employer has discretion to choose among equally qualified candidates, provided the decision is not based upon unlawful criteria. In this case it appears that the plaintiff was not promoted solely because the employer felt that she would not be right for the job. This in itself is not discrimination based on sex. The fact that the employer may have misjudged the qualifications of the applicant does not in itself expose him to liability. Texas Dept. of Community Affairs v. Burdine, supra, 101 S.Ct. at 1097. Title VII was not intended to diminish traditional management prerogatives. Id. Because the plaintiff has not met her required burden of proof, the findings of the district court must be affirmed.

IV.

Plaintiff next contends that Friedman's failure to select her for the readvertised Branch Chief position after she had initiated the EEO complaint process constituted a retaliatory act prohibited by Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a). The district court discussed the plaintiff's claim of retaliation only as it related to the denial of her request for funding for classes and not in the context of Friedman's ultimate selection of Soltes as Branch Chief. In light of our conclusions in section II of this order however, we conclude that no causal connection between her EEO complaint and her failure to get the promotion to Branch Chief has been proven by a preponderance of the evidence. As has been discussed, the plaintiff was not given the promotion for a legitimate, nondiscriminatory reason that has not been shown to be a pretext for discrimination.

V.

The plaintiff's final claim on appeal is that the district court erred by ruling that the government was not guilty of retaliatory misconduct when it denied her funding for two law school training courses.

Some time in the fall of 1976, the plaintiff applied for funding for two courses to be taken at IIT-Kent School of Law in Chicago.7/ On November 17, 1976 the plaintiff was informed that a decision on the funding for her courses would be postponed pending the selection of the new Branch Chief. It was stated that should she be selected for the position of Branch Chief, her training needs would have to be reevaluated. For this reason, development of her individual training program was also postponed.

On November 21, 1976, a freeze on all training authorizations was ordered due to "severe budgetary problems." Prior to this date there had been "unlimited budgetary resources" for training purposes.

On November 23, 1976, plaintiff filed her complaint charging sexual discrimination. Thirteen days later, on December 6, 1976, the plaintiff was informed that her request for funding had been denied. Three reasons were given.8/ The plaintiff was told that her new supervisor would recommend any courses that might be needed in the future after reviewing plaintiff's skills and job needs. The plaintiff now claims that the denial of funds was in retaliation for her EEO complaint.

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7/ These courses were described as Labor Law 381 - Rights and Responsibilities of Employers, Unions, and Employees in Public and Private Sectors and in Collective Bargaining, and Labor Law 612 - Seminar on Various Subject Matters in Labor Relations.

8/ The first reason was that extensive training had already been approved for plaintiff during the past 18 months. The second reason was that one of the courses for which funding was requested appeared to be similar to one taken in the past. The course in question was described on the funding application as "Labor Law 381 -- Rights and Responsibilities of Employers, Unions, and Employees in Public and Private Sectors and in Collective Bargaining." Plaintiff had previously taken a course entitled "Labor Law 320 -- Rights and Responsibilities of Employers, Unions, and Employees in Public Sector." The final reason that was given read: "Your training interest appears to be law degree oriented which is not consistent with the qualifications of the position to which you are assigned."

Section 704(a) of Title VII9/ is the primary source of protection against retaliation for those who participate in the process of vindicating civil rights through Title VII. Under that section broad protection is afforded to the participant in order to effectuate the purposes of Congress. See Pettway v. American Cast Iron Pipe Co., 411 F.2d 998, 1006, n.18 (5th Cir. 1969). In cases alleging retaliation for participation in Title VII processes, the order and allocation of proof is the same as that used in Title VII suits generally. See Whatley v. Metropolitan Atlanta Rapid Transit, 632 F.2d 1325, 1327-28 (5th Cir. 1980); Womack v. Munson, 619 F.2d 1292, 1296 (8th Cir. 1980), cert. denied, 101 S.Ct. 1513 (1981); Corley v. Jackson Police Dept., 566 F.2d 994, 998 (5th Cir. 1978); Aguire v. Chula Vista Sanitary Service, 542 F.2d 779, 781 (9th Cir. 1976); Hochstadt v. Worcester Foundation, 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976); see generally B. Schlei & P. Grossman, Employment Discrimination Law, ch. 15 (1976 and Supp. 1979).

First, to prove a prima facie case under section 704, the plaintiff must establish (1) that there was a statutorily protected participation, (2) that an adverse employment action occurred, and (3) that there was a causal link between the participation and the adverse employment action. Whatley v. Metropolitan Atlanta Rapid Transit, id. at 1328; Womack v. Munson, id. at 1296; B. Schlei, id. at 417.

The district court correctly used the above standard and found that the plaintiff had made out a prima facie case of retaliation. We agree. An EEO complaint, a protected activity, was filed by the plaintiff against the defendant. Funding for the two law school courses was then denied. This denial of funding followed the protected activity so closely as to justify an inference of retaliatory motive. These facts create a prima facie case of retaliation.

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9/ Section 704(a) of title VII provides:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a).

The trial court then found that the defendant had articulated legitimate, nondiscriminatory reasons for the denial of funding. The three reasons originally given to the plaintiff are all presumptively valid. The evidence further revealed that there were severe budget cuts which forced HEW to disallow many requests for funding. The total training budget allocated for the 90 people in plaintiff's department was $1,400. The plaintiff's request for $465.00 was one-third of the total budget. It is clear that the defendant did articulate legitimate, nondiscriminatory reasons for the denial of funds for plaintiff's law classes.

The burden then shifted to the plaintiff to show that the defendant's reasons were a mere pretext for retaliation. The district court found that the reasons given by the defendant were not proven to be pretextual. Our review of the record leaves us with the clear impression that the trial court's finding is correct. The sole factor supporting the plaintiff's claim is the close chronological sequence of events. The defendant has come forward and amply rebutted any inference that may have existed from the time sequence of events. The plaintiff has not in any way proved that the defendant's reasons were in fact a pretext for retaliatory misconduct in violation of section 704(a) of Title VII. The mere inference supported by the chronological link of the events is not enough to prove that the defendant's reasons are a mere pretext.

For the reasons stated herein, the decision of the district court is affirmed.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
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| SHEILA REILLY, Plaintiff, | ) | |
| v. | ) | 77 C 20 |
| JOSEPH CALIFANO, Secretary of the Department of Health, Education, and Welfare, Defendant. | ) | |

MEMORANDUM OPINION

JOEL M. FLAUM, District Judge:

This action arises out of a claim by plaintiff based upon title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (1978), as amended by the Equal Employment Act of 1972, 42 U.S.C. § 2000e-16(c) (1978). Plaintiff, a woman, contends that she was denied a promotion to the position of Chief of the Labor-Management Relations Branch of the United States Department of Health, Education, and Welfare ("HEW")[1/] on the basis of her sex. Plaintiff then filed a complaint with the Equal Employment Opportunity Commission ("EEOC") charging the defendant, Secretary of HEW,[2/] with sex discrimination. Subsequently, plaintiff filed the instant case with this court. Plaintiff alleges that the defendant denied her the promotion on the basis of her sex. Plaintiff further alleges that her request for reimbursement for job related law school courses was denied by defendant in retaliation for the filing of the EEOC complaint. Defendant contends that plaintiff was not promoted to Chief of the Labor-Management Relations Branch because

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1/ Since the filing of Reilly's complaint, HEW has been redesignated the United States Department of Health and Human Services. See 20 U.S.C. § 3508(a) (1978).

2/ The named defendant is Joseph Califano who was Secretary of HEW at the time the instant case was filed. Richard Schweiker is presently the Secretary of HHS. The other defendants named in plaintiff's EEOC complaint have been dismissed voluntarily from the instant case.

plaintiff is a "shy, retiring person" and defendant considered a "strong, outgoing" personality to be essential to the position. Defendant further contends that it denied plaintiff's training request because "extensive" training had been approved for plaintiff during the preceding eighteen months, the request totaled approximately one-third of the entire budget for such training, and plaintiff's training goals appeared to be law degree oriented which was not required for her position with HEW. The court concludes that plaintiff has not established that she was discharged because of her sex and enters the following findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52.

## FINDINGS OF FACT

1. Plaintiff is a woman.

2. Defendant is a federal agency with an office located in Chicago, Illinois.

3. In August 1976, plaintiff was employed by HEW as a Labor-Management Relations Specialist, GS-12. Plaintiff had held that position since 1974. Plaintiff reported directly to LeRoy Bradwish ("Bradwish"), Chief of the Labor-Management Relations Branch and often served as chief in Bradwish's absence.

4. In August 1976, Bradwish announced that he was resigning as chief effective September 1, 1976. Richard Friedman ("Friedman"), Regional Director of HEW, called a meeting in his office to discuss filling the vacancy. The meeting was attended by Friedman; Bradwish; George Bardahl ("Bardahl"), Assistant Regional Director for Administration and Management of HEW; George Holland ("Holland"), Deputy Regional Director of HEW; and Thomas Dodson ("Dodson"), Regional Personnel Officer of HEW. At the meeting, Friedman stressed the importance of filling the vacancy as quickly as possible with the best qualified person with a labor relations background who had experience in dealing with unions.

5. Plaintiff was detailed to the position as Acting Chief of the Labor-Management Relations Branch, GS-13, for the interim between Bradwish's resignation and the appointment of his replacement.

6. Dodson posted a vacancy announcement, No. 476-56, for the position of Chief of the Labor-Management Relations Branch, GS-13. The vacancy was posted nationwide and invited any qualified HEW or federal employee to apply for the position. In addition, the Regional Personnel Office of HEW requested the names of candidates from outside HEW from the United States Civil Service Commission's Federal Automated Career System list ("FACS list"). The FACS list is a register maintained by the United States Civil Service Commission ("the Commission") which lists job applicants who have registered with the Commission for referral to positions within their areas of interest. The FACS list includes information regarding the applicants' relevant job experience.

7. Twenty-three (23) persons applied for the position of Chief of the Labor-Management Relations Branch. Five (5) of these applicants met the minimum requirements set by a promotion panel. The FACS list was considered, but the entire list did not arrive in time to meet the closing date.

8. Dodson recommended a promotion panel to rank the applicants. This recommendation was approved by Friedman. Dodson developed a ranking system which consisted of factors under the general headings of "Experience," "Training," "Outside Activities," and "Awards and Citations." These general headings contained several subcategories. The ranking system allotted each general heading a maximum number of points, but the subcategories were not numerically weighted. The maximum possible score was 100 points.

9. The promotion panel met in October 1976 and ranked the applicants. A promotion certificate dated October 8, 1976 was submitted to Friedman. The certificate

listed the plaintiff and Sharon Bauer ("Bauer") as the best qualified candidates for the position of Chief of the Labor-Management Relations Branch. The plaintiff received 76 points and Bauer received 65 points out of the possible 100 points.

10. Friedman rejected both plaintiff and Bauer. Friedman then decided to reannounce the position at a lower grade, GS-12/13. Friedman testified that his reason for reannouncing the position at a lower grade level was to attract additional highly qualified candidates. Friedman testified that it was within his authority to refuse to select any of the candidates submitted on a promotion certificate. Friedman further testified that he previously had reannounced positions when it appeared that other more qualified candidates were available.

11. After being informed that she had not been chosen for the position, plaintiff sought pre-complaint counseling from the EEOC.

12. On November 1, 1976, the position was reannounced with the lower grade level as vacancy announcement No. 476-79. Applicants under the previous announcement automatically were considered as applicants for the reannounced position. Persons on the FACS list also were considered.

13. A second promotion panel was convened to rank the candidates. The ranking system was the same as the one used by the first promotion panel, except that numerical weights were assigned to the subcategories under the general heading of "Experience." On November 19, 1976, the promotion panel submitted a promotion certificate to Friedman. The certificate listed Thomas Artman ("Artman"), plaintiff, and Cynthia Soltes ("Soltes") as "highly qualified" for the position. Artman received 87 points, plaintiff received 73 points, and Soltes received 67 points.

14. On November 22, 1976, plaintiff was interviewed by Friedman and Holland concerning her application for the position. In addition, on November 24, 1976, both plaintiff and Soltes were interviewed by Dodson and Bardahl.

15. On November 23, 1976, plaintiff filed a formal complaint with the EEOC against the defendant, Friedman, Bardahl, and Dodson. Friedman and Bardahl were notified of the complaint on the same day that the complaint was filed.

16. On November 24, 1976, Friedman announced that Soltes had been selected for the position. Friedman testified that he felt that Soltes was the most qualified person for the position since she is an "outgoing and aggressive" individual with experience in dealing with unions.

17. On December 6, 1976, Dodson refused to approve plaintiff's request for funds for two labor law courses. Dodson previously had approved plaintiff's requests for funds for law school courses. Dodson testified that his reasons for not approving plaintiff's request were that extensive training had been approved for plaintiff during the preceding eighteen months, including three law school courses, that the request totaled approximately one-third of the entire budget for such training, and that plaintiff's training goal appeared to be law degree oriented which was not required for her position with HEW.

18. Friedman testified that, while plaintiff was a competent employee, he had observed plaintiff to be a shy, retiring person. Friedman also testified that he considered a strong, outgoing personality essential to the position. Friedman further testified that he felt that plaintiff would not perform well under the type of pressure generated by face-to-face union negotiations. In addition, Friedman testified that he considered Bauer to be "marginally qualified" for the position.

19. Friedman testified that as Regional Director of HEW he attempted to place more women and members of racially minorities in higher grade level positions with HEW. Friedman also testified that he has not achieved what he considered to be a representative balance of women and minority members by 1976. Friedman further testified that it was for this reason that he endeavored to fill the position of Chief of the Labor-Management Relations Branch with a qualified women or minority member, if at all possible.

## CONCLUSIONS OF LAW

1. The court has jurisdiction over this action under title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (1978), as amended by the Equal Employment Act of 1972, 42 U.S.C. § 2000e-16(c) (1978).

2. An employer-employee relationship existed between plaintiff and defendant during the relevant time period.

3. The defendant is an agency of the federal government within the meaning of 42 U.S.C. § 2000e-16(a) (1978) which provides, in pertinent part:

> All personnel actions affecting employees or applicants for employment . . . in executive agencies (other than the General Accounting Office) as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service . . . shall be made free from any discrimination based on race, color, religion, sex, or national origin.

4. In a case alleging disparate treatment, the employer has treated some employees more favorably than others because of their race, color, religion, sex, or national origin and thus proof of discriminatory motive is critical. Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978); International Brotherhood of Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977).

5. In a title VII case, the plaintiff bears the initial burden of establishing a prima facie case of discrimination. Furnco Construction Corp. v. Waters, 438 U.S. 567, 576 (1978); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Sherkow v. Wisconsin, 630 F.2d 498, 502 (7th Cir. 1980); Gaballah v. Johnson, 629 F.2d 1191, 1200 (7th Cir. 1980). In a sex discrimination employment action where individual disparate treatment is alleged, it is incumbent upon the plaintiff to offer proof of the following propositions in order to establish a prima facie case:

(1) The plaintiff is a woman.
(2) The defendant had an employment vacancy which it sought to fill.
(3) The plaintiff possessed the qualifications to filled the vacancy and applied.
(4) The plaintiff was rejected.
(5) The defendant continued to seek other applicants or filled the vacancy with a male applicant.

Sherkow v. Wisconsin, 630 F.2d 498, 502 (7th Cir. 1980). See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). It is not necessary to show that the plaintiff was as qualified as the successful applicant. Davis v. Weidner, 596 F.2d 726, 730 (7th Cir. 1979). In the instant case, plaintiff has satisfied all five of the elements. Thus, plaintiff has established a prima facie case of sex discrimination.

6. Since plaintiff has proved a prima facie case of sex discrimination, the burden of proof shifts to defendant to articulate some legitimate, nondiscriminatory reason for plaintiff's rejection. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Sherkow v. Wisconsin, 630 F.2d 498, 502 (7th Cir. 1980). This requirement is satisfied if the defendant produces evidence of legitimate, nondiscriminatory reasons for rejecting the plaintiff. Board of Trustees v. Sweeney, 439 U.S. 24, 25 n.2 (1978); Sherkow v. Wisconsin, 630 F.2d 498, 502 (7th Cir. 1980). In the instant case, defendant rejected plaintiff for the position because, although competent, she does not possess the sort of personality and demeanor necessary for the position. Thus, defendant has rebutted the prima facie case which was established by plaintiff.

7. The order of proof then imposes upon the plaintiff the burden of proving that the defendant's reasons were a pretext for discrimination prohibited by title VII, and that the plaintiff would have been hired but for this discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 804-05 (1973); Sherkow v. Wisconsin, 630 F.2d 498, 502 (7th Cir. 1980). Thus, the ultimate burden of persuasion regarding the issue of discrimination remains with the plaintiff who must convince the court by a preponderance of the evidence that he or she has been the victim of discrimination. Sherkow v. Wisconsin, 630

F.2d 498, 502 (7th Cir. 1980). Evidence relevant to a showing of pretext includes the defendant's general policy and practice with regard to minority employment. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 804 (1973). In the instant case, plaintiff has failed to prove that defendant's reasons for rejecting her were a pretext for discrimination prohibited by title VII. Moreover, defendant attempted to recruit women for higher grade level positions and ultimately chose a woman for the position sought by plaintiff. Thus, plaintiff has not proved that the presumptively valid reason for her discharge was in fact a pretext for a discriminatory decision.

8. Section 704(a) of title VII provides, in pertinent part:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a) (1978). The order and allocation of proof applied in title VII suits generally also is applied in cases alleging retaliation for participation in title VII grievance procedures. See Womack v. Munson, 619 F.2d 1292, 1296 (8th Cir. 1980), appeal docketed, No. 80-278 (U.S. Aug. 21, 1980); Hochstadt v. Worchester Foundation, 425 F. Supp. 318, 324 (D. Mass.), aff'd, 545 F.2d 222 (1st Cir. 1976); Aguirre v. Chula Vista Sanitary Service & Sani-Tainer, Inc., 542 F.2d 779, 781 (9th Cir. 1976).

9. Section 704(a) requires a plaintiff to show: (1) statutorily protected participation; (2) adverse employment action; and (3) a causal connection between the two. Womack v. Munson, 619 F.2d 1292, 1296 (8th Cir. 1980), appeal docketed, No. 80-278 (U.S. Aug. 21, 1980). Therefore, as under McDonnell Douglas Corp. v. Green, 411 U.S. 722, 804 (1973), and its progeny, if the plaintiff establishes a prima facie case of retaliation, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. If the defendant so rebuts the plaintiff's

prima facie case, the plaintiff must then prove that the defendant's reasons were a pretext for discrimination prohibited by title VII. In the instant case, plaintiff has established a prima facie case of retaliation. The defendant, however, denied plaintiff's request for legitimate, nondiscriminatory reasons, including that extensive training funds had been approved for plaintiff shortly before this last request and that the request would have consumed a disproportionately large part of defendant's budget for such training. Plaintiff has failed to prove that the defendant's reasons were a pretext for discrimination prohibited by title VII. Thus, plaintiff has not proved that the presumptively valid reason for the defendant's refusal to reimburse her for the law school courses was in fact a pretext for retaliatory conduct in violation of section 704(a) of title VII.

JUDGMENT

Accordingly, plaintiff's claims of employment discrimination based upon sex and retaliation are denied and judgment is entered for defendant.

It is so ordered.

John M. Hannon
UNITED STATES DISTRICT JUDGE

DATED: January 27, 1981